



**SCOTTSDALE AIRPORT ADVISORY COMMISSION
PUBLIC MEETING
Scottsdale Airport Terminal Lobby
15000 N. Airport Drive, Scottsdale, AZ**

July 13, 2011

MINUTES

- PRESENT:** Gunnar Buzzard, Chairman
John Washington, Vice-Chairman
William Bergdoll
Ken Casey
Michael Goode
William Schuckert
Lois Yates
- STAFF:** Clifford Frey, Assistant City Attorney
Shannon Johnson, Management Analyst
Gary P. Mascaro, Aviation Director
Kate O'Malley, Planning & Outreach Coordinator
Chris Read, Airport Operations Manager
- OTHERS:** John Castrogiovanni, Vertical Aviation
Patrick Colceri, Hangar One
Adam Jaffe, 7689, LLC
Mike Leary, Lex Capital
John Meyer, SNAPOA
Jeff Schlueter, Southwest Jet
Ron Stafford, Stafford Consultants
Tommy Walker, Scottsdale Air Center

CALL TO ORDER

Chairman Buzzard called the meeting to order at 5:25 p.m.

ROLL CALL

A formal roll call confirmed the presence of Commissioners as noted above.

AVIATION DIRECTOR'S REPORT

Mr. Gary Mascaro, Aviation Director, invited Airport Operations Manager Mr. Chris Read to give an update on the ongoing construction projects. Phase 1 is expected to be finished on schedule by August 5. Phase 2 will begin thereafter to be completed by September 5. Bidding on Phase 3 closed yesterday. Staff hopes to have this completed for the Air Fair; however if there is any risk that this might not be feasible construction will begin immediately following the Air Fair.

Management Analyst Ms. Shannon Johnson provided an overview of the restaurant RFP process. The period closed with no bidders. Only one potential bidder attended the pre-submittal meeting. There are currently no plans to issue another RFP.

In response to Commissioner Casey's question, Ms. Johnson said there was no feedback from anyone about the RFP, although she had made it clear to all potential bidders that they should bring any issues forward before the RFP closed.

Recalling that someone had expressed interest which had led to the reissuance of the RFP, Commissioner Bergdoll said he was confused. Ms. Johnson said that party did not bid.

Noting that a restaurant is very important to the vitality of the Airport, Commissioner Casey wondered why people are not bidding. Mr. Mascaro said staff has looked into all aspects of this matter several times, having spent significant staff time putting the RFP package together. They consulted with some potential bidders who indicated that the package was acceptable, so at this point he said he is at a loss. The Airport is not permitted to give the space away without charging rent. Rent is \$800 per month, which seems very reasonable. Commissioner Casey urged that a restaurant is very important and suggested looking at other possibilities.

Chairman Buzzard said this could be a future agenda item.

Commissioner Goode pointed out that right now the space is not generating any rent for the Airport. He asked how widely the RFP had been distributed. Mr. Mascaro said the distribution list is long as they sent it to contacts from the Sky Harbor distribution list and people on the Economic Vitality mailing list. He felt the key may be getting more foot traffic into the Airport.

APPROVAL OF MINUTES

1. Approval of Minutes

Regular Meeting: June 9, 2011

Vice Chairman Washington made a motion to approve the regular meeting minutes of the June 9, 2011 meeting. Commissioner Bergdoll seconded the motion, which carried by a unanimous vote of seven (7) to zero (0).

PUBLIC COMMENT

None noted.

CONSENT AGENDA

Commissioner Schukert was recused.

1. Discussion and Possible Action Regarding Airpark Aeronautical Business for Lex Capital, U.S. Corp. to conduct Hangar/Shade Leasing Services
2. Discussion and Possible Action Regarding Application for Airpark Aeronautical Business for Borden Properties, LLC. to conduct Hangar/Shade Leasing Services
3. Discussion and Possible Action Regarding Airpark Aeronautical Business for Tempus Jets, Inc. to conduct Aircraft Charter Brokerage Services

Vice Chairman Washington made a motion to approve the consent agenda items. Commissioner Goode seconded the motion, which carried by a unanimous vote of six (6) to zero (0). Commissioner Schukert was recused.

REGULAR AGENDA

4. Discussion and Possible Action to Adopt Resolution No. 8721 and Ordinance No. 3950 amending Chapter 5, Aviation, of the Scottsdale Revised Code, Airport Rules and Regulations, Airport Minimum Operating Standards, Airpark Rules and Regulations, Airpark Minimum Operating Standards and the Scottsdale Airport/Airpark Rules and Fees schedule that addresses an overall review and modification of the Airport's primary guiding documents to help foster the long-term economic health and enhance the safe operating environment at the Airport/Airpark.

Chairman Buzzard noted that they have heard from a number of stakeholders about this topic and at the last meeting the Commission decided to table this item.

Mr. Mascaro said that since the last meeting, staff have met with stakeholders regarding fueling, which is the question that most needs to be resolved. Section 506 of the current regulation states that no retail aircraft fuel sales shall take place in the Airpark. Section 511 discusses the fuel storage area (the fuel farms). This is for non commercial private use only by the owner or Airpark aviation operator. The City's position is that based on the regulations as they stand today, there is absolutely no ability to mark up any cost associated with fuel flowage. Today 27 fuel farms are marking up the cost. However owners are supposed to obtain a self-fuelling permit and pump their own fuel.

As discussed at the last meeting, the regulations date from 2000 and much has changed. Some Airpark operators are marking up fuel. Some are providing fuel line services. The City's position is that Airpark fuelling is intended to be self-fuelling only. Fueling for profit, if authorized, would create a new aeronautical activity that would compete with the FBOs and might result in a violation of FAA grant assurances. The regulations do not clarify that fuel can be marked up to cover costs.

The aim of the regulatory rewrite is to define clearly what an Airpark operator can do. Staff believes that they should be able to recover the costs of maintaining and operating a fuel farm. Staff held two strategic meetings and invited every fuel farm operator and the FBOs. Attendance was good and discussion lively.

Mr. Mascaro present three options to the Commission:

1. Keep the regulation as is
2. Adopt the solution recommended by the City last month, allow operators to charge up to 25 cents per gallon above the wholesale cost of fuel
3. Allow the fuel farm operators to charge a fuel farm rental fee

Mr. Mascaro said option 1 would mean enforcing no markup whatsoever on fueling in the Airpark.

In staff's opinion, option 2 would allow most operators to recover the direct operating costs of running a fuel farm. This seems to be a fair and reasonable compromise that would be easy for staff to audit and enforce. The FBOs support this option, as do the majority of the Airpark fuel farm operators they have heard from. He said that many of the operators are charging less than 25 cents.

Mr. Mascaro explained how option 3 would work. The aircraft owner would buy his own fuel and store it at the fuel farm, paying a rental fee to the fuel farm operator for use of the storage tank. The rental fee would be taxed by the Airport at 5%, plus the City would charge the transaction privilege tax of 2.15%. Staff would be able to audit if necessary. The FBOs do not support this option, and there is minimal support by the Airpark fuel farm operators.

Mr. Mascaro then presented the raw data that the Commission requested at the June meeting. He concluded that the City's recommendation is option 2 because it is very easy to audit and preserves the original intent of the regulation, allowing the fuel farm operators to recover the cost of operating and maintaining a fuel farm.

Chairman Buzzard invited public comment.

Mr. Mike Leary of Lex Capital said there is no perfect solution. They analyzed costs for 2010 and found their cost to be 24.4 cents per gallon, however, over time this number would need to be revisited and adjusted.

Mr. Ron Stafford, Stafford Consultants, said written responses by the City Attorney would have been helpful. He noted the potential for future conflict and legal actions if a speedy resolution is not found.

Mr. Patrick Colceri of Hangar One expressed his support for option 2. They are the second largest Airpark fuel farm, pumping an average 30,000 gallons per month. They charge 15 cents per gallon above cost and this number works for them. Commissioner Yates asked whether as a newer fuel farm they have better equipment and technology, enabling them to keep overhead lower. Mr. Colceri agreed that may be the case.

Mr. Tommy Walker of the Scottsdale Air Center commended staff for their hard work on the regulatory rewrite. The vast majority of the proposed changes are agreed upon by everybody. Scottsdale Air Center supports option 2. The two FBOs do not have a problem with the Airpark operators/tenants recovering their direct operating costs. He reminded the Commission that the FBOs have been ranked among the top 20 FBOs in the country out of over 4,000 for several years. They are an asset to the Airport and to Scottsdale. The FBOs request that if any Airpark operators are found to be in contravention of the regulation their operations be immediately stopped. Any back taxes and profits should then be forfeit to the Enterprise Fund.

Saying that he realizes how difficult this issue is, Mr. John Meyer of Scottsdale North Airport Property Owners Association (SNAPOA) noted that one of his staff members had devised option 3. He feels that option 2 will not enable all fuel farm operators to recover their costs, as some of the farms are quite old and have much higher operating and maintenance costs. Many SNAPOA members concur.

Mr. Adam Jaffe, 7689, LLC, spoke in favor of option 3, opining that option 2 is price fixing and not constitutional. His company bought property in the Airpark in April, which has a fuel farm on it. He expressed concern that if they have large maintenance or repair expenses they will not be able to recover all their costs.

Mr. Jeff Schlueter of Southwest Jet Corporate Center argued that since they have limited hangar space, the fuel sales in the Airpark are not hurting the FBOs. Transient aircraft are the primary source of revenue for the FBOs. The FBOs have unlimited growth potential. Recognizing that the Airport and Airpark need the FBOs to succeed, Mr. Schlueter said that the Airpark operators' ability to sell fuel will not have a negative impact on the FBOs. He believed that the Airpark operators should be allowed to charge whatever they want for fuel and hangar services.

In reply to Vice Chairman Washington's query about his opinion regarding option 3, Mr. Schlueter said it is a viable alternative and the City would generate more revenue from the taxes.

Mr. John Castrogiovanni of Vertical Aviation said back in 1996 the 25 cents per gallon markup was an unwritten rule accepted by the FAA. He is intimately familiar with

Southwest Jet since that time. He is in favor of option 2, which has worked for the past 14 years.

Chairman Buzzard said nothing was ever written about a 25-cent markup. His understanding was that this unwritten rule was developed in a series of meetings. Mr. Castrogiovanni said at meetings there was a verbal agreement to help cover the operating expenses, but nothing was ever put in writing.

Saying that his position has not changed, Vice Chairman Washington said he respects the work done by Mr. Frey and Airport staff, he has respect for both the FBOs and for the fuel farm operators at the Airpark, and for Mr. Meyer for thinking outside of the box. This has been the toughest issue faced by any commission recently. This issue is very nuanced. Tonight the Commission will be making a recommendation for City Council to consider. He restated his position that the City should not be in the business of doing accounting for small businesses. The regulations should rather be reduced.

Chairman Buzzard asked Mr. Mascaro if staff has discussed any of the options with the FAA. Mr. Mascaro replied that he contacted the Western Pacific Region compliance officer of the FAA. The FAA would only get involved if a complaint was filed. The compliance officer told him that they are following the right procedure to reach consensus. If they can reach agreement among local stakeholders the FAA will not get involved.

Chairman Buzzard said they are in this position now because it was never properly tackled in the past. He has spent much time talking with Airpark and Airport businesses trying to get a grasp of the history that brought them to this point. He summarized that this is not a terribly complicated issue. A set of rules was put in place but never enforced. They need to think about the future of the Airpark.

Vice Chairman Washington said a fourth option would be to strike the language about retail aircraft fuel sales from 506 (d), since the Airpark operators can only sell fuel to aircraft in their hangar. He would recommend leaving 511 as it stands.

Commissioner Goode suggested setting the markup at 25 cents per gallon for a year, but allowing fuel farm operators to prove that their expenses were higher if necessary. The intent of through the fence operations is to provide a self-fueling capability. Everyone understands that a fuel farm has operating and maintenance costs. As Mr. Mascaro pointed out, up to 74 percent of the stakeholders support option 2. He suggested reviewing the 25-cent markup after a year. Commissioner Goode pointed out that operators need a way to recover from a catastrophic failure on an older fuel farm. His recommendation would be that rather than having Airport staff audit the Airpark operators, they could fix a markup and then the onus would be on individual operators to show that their costs were, in fact, higher.

Vice Chairman Washington commended Commissioner Goode for thinking outside of the box but cautioned that this could become complicated and a further intrusion of government into private business. Commissioner Goode said the intent of the markup is to reimburse operators for their costs.

Commissioner Yates asked whether if Vice Chairman Washington's fourth option were to be adopted the regulations would need to be changed every year. Mr. Mascaro said he did not believe anything needed to be put into the regulations, which could be amended at any time. He appreciated Commissioner Goode's comments about putting the onus on the operators. Commissioner Yates inquired about the possibility of working with operators on an individual basis. Mr. Mascaro said staff considered that idea. The problem is that the operating expenses are all over the board.

Commissioner Bergdoll said they should not force the issue; dialog should continue.

Commissioner Schukert said the Commission now has much more information than was available last month. Through the fence operations are a valuable asset to the Airport and they must make sure it is not put in jeopardy. The possibility to re-evaluate the markup should be enshrined.

Commissioner Casey said he concurs with Vice Chairman Washington's comments. He commended Commissioner Goode for thinking outside the box, as he is a firm believer in less government involvement in private business. This issue should not pit the Airport against the FBOs. He pointed out that everyone has made an investment and is working hard to make their business successful. This is a bigger issue than trying to decide whether 25 cents is the correct markup amount. He urged everyone to look at the big picture and keep trying to find a solution that can work for everyone.

Chairman Buzzard said he is in favor of the 25-cent markup option, with the possibility of making adjustments in future. This would put them on solid legal ground and would be workable for both the Airport and Airpark operators.

Commissioner Yates expressed concern that nothing in the regulations would require annual review. Chairman Buzzard said that any Commissioner can have this put on a meeting agenda. Citizens can also bring their concerns to the Commission. Commissioner Yates commented that this is easy to say but might be harder to implement. Chairman Buzzard said individuals with a vested interest would make their opinions known.

Assistant City Attorney Mr. Clifford Frey proposed language to be added at the end of section 511(a). "This limitation is approved for a period of one year from the date it goes into effect. The Aviation Director will regularly review this provision and make such recommendations to the Commission as he considers appropriate."

Commissioner Bergdoll asked what would happen after one year if no changes were recommended at the end of that time. Mr. Frey said the Aviation Director could bring any issues or concerns to the Commission during that time, but at the end of the one-year period the Commission would have to revisit the issue. If changes were made this would be a recommendation for Council to vote on.

Chairman Buzzard asked Mr. Mascaro what the FAA would say to this proposal. Mr. Mascaro could not say. He reiterated that the FAA will not get involved unless a formal complaint is received.

Commissioner Goode suggested including a clause allowing increases based on the CPI. Chairman Buzzard noted that this is already included in the draft.

Mr. Frey suggested the following language: "This limitation is approved for a period of one year from the date it goes into effect. It will remain in effect as approved unless the Commission recommends an amendment. The Aviation Director will regularly review this provision and make such recommendations to the Commission as he considers appropriate."

Commissioner Yates said she was much more comfortable with that language.

Vice Chairman Washington said with all due respect, regulation begets regulation. The current discussion is a perfect example of why Scottsdale as a municipality does not want to be in the business of dictating to businesses how to do their accounting.

Vice Chairman Washington made a motion that the Commission recommend to City Council that they approved Resolution 8721 and Ordinance 3950 as presented, with the exception of striking the second sentence of 506(d), leaving 511 intact. Commissioner Bergdoll seconded the motion.

In response to a question from Commissioner Schuckert, Vice Chairman Washington explained that everything staff has done is fine. The Commission has spent a lot of time talking about the fuel issues. His motion is to strike the second sentence in section 508(d) which references retail sales. He would like section 511 to be left as it currently stands, not as it appears in option 2.

Chairman Buzzard asked whether everyone understood the motion.

Apologizing that he had misunderstood the motion, Commissioner Bergdoll rescinded his second of the motion. Mr. Frey confirmed to Chairman Buzzard that this action was permitted.

Commissioner Casey seconded Vice Chairman Washington's motion.

Vice Chairman Washington stated that the City should not dictate what the markups are. He has read the FAA compliance manual and does not agree that there is a prohibition on the fuel farms making a profit.

Chairman Buzzard said he feels the motion presents a problem for the Commission and could potentially cause larger legal issues later.

Commissioner Bergdoll said the Commission's job is to protect the Airport. He pointed out that although the Airpark operators are private businesses, they are in business because of the Airport, which is a public facility. He is not a fan of regulation but the City has a role in maintaining its public facilities.

Commissioner Casey said although people are afraid of losing grant monies, these funds are not the FAA's money; it is taxpayer dollars citizens have paid.

The vote failed by a vote of two (2) to five (5). Vice Chairman Washington and Commissioner Casey voted in favor of the motion. Chairman Buzzard and Commissioners Bergdoll, Goode, Schuckert, and Yates voted against it.

Commissioner Bergdoll made a motion to adopt Resolution 8721 and Ordinance 3950 amending the Airport's primary documents with option 2 as outlined in the packet. Commissioner Goode seconded the motion.

Commissioner Schuckert suggested that the language suggested by Mr. Frey might be appropriate as it allows for the concept of revision.

Commissioner Goode made a motion to amend the motion on the floor by adding the Assistant City Attorney's language as previously stated. Commissioner Yates seconded the motion.

Mr. Frey re-read the language for clarity, "“This limitation is approved for a period of one year from the date it goes into effect. It will remain in effect as approved unless the Commission recommends an amendment. The Aviation Director will regularly review this provision and make such recommendations to the Commission as he considers appropriate.”"

Vice Chairman Washington said although he cannot vote for this motion he greatly respects the Commissioners for trying to put together a workable solution.

The motion to amend the motion on the floor passed by a vote of five (5) to two (2). Chairman Buzzard and Commissioners Bergdoll, Goode, Schuckert, and Yates voted in favor of the motion. Vice Chairman Washington and Commissioner Casey voted against it.

The Commission proceeded to vote on the original motion on the floor, as amended. This motion passed by a vote of five (5) to two (2). Chairman Buzzard and Commissioners Bergdoll, Goode, Schuckert, and Yates voted in favor of the motion. Vice Chairman Washington and Commissioner Casey voted against it.

5. Discussion and Input regarding the Airport Commission Liaison Program

Commissioner Goode reported that the LASP is still under review. Effective August 2, it will no longer be possible to block out tail numbers. This means that anyone can track any aircraft in the country, which poses security concerns to high profile individuals and to corporations. He urged everyone to write their Congressman to express their opinion.

6. Discussion and Input Regarding Operations Report for May and June 2011

Mr. Read reviewed the operations reports for May and June.

7. Discussion and Input Regarding Quarterly Noise Complaint Summary Report

Ms. Kate O'Malley, Planning and Outreach Coordinator, reviewed the quarterly noise complaint summary report. She noted a significant reduction in complaints, from 467 to 92 in the second quarter. This is typical as the weather gets warmer.

8. Discussion and Input regarding Monthly Financial Reports for April and May 2011

Ms. Johnson presented the April and May reports, noting that staff anticipate total fiscal year revenue will be slightly below forecast, mainly due to the 11-day runway closure.

Commissioner Goode inquired about customs revenues. Ms. Johnson said those revenues are slightly up compared to last year. The new program has not led to a significant increase.

She explained to Commissioner Bergdoll that the Aviation Fund cash balance decreased because payments were made for CIP projects.

9. Discussion and Input regarding Marketing, Community, and Pilot Outreach Programs

Ms. O'Malley outlined activities related to the Air Fair, pilot outreach, community outreach, and plans to attend new trade shows in order to effectively exhibit at the next year's show, among other things.

Vice Chairman Washington said he was impressed by everything that is being done. She confirmed to Commissioner Casey that they will be attending the October 2011 NBAA trade show to observe and learn, and will have booths in January 2012 at the Schedulers and Dispatchers Conference, and at the October 2012 NBAA show. Chairman Buzzard complimented her on the press coverage achieved.

10. Discussion and Input Regarding Status of Aviation Items to City Council.

Mr. Mascaro said Council will consider the Commission's recommendation regarding the Airport/Airpark rules and regulations on August 23. He will email the Commissioners once he knows whether this will be on the regular or consent agenda. In any case even if it is on the consent agenda, he will attend the Council meeting prepared to speak.

He reported that Ms. O'Malley has added a sentence to the planning projects explaining that the Airport staff focus is on projects on the Airport having taxi lane access, height implications, or sensitive noise uses.

11. Discussion and Possible Action to Modify the Airport Advisory Commission Meeting Start Time, Schedule, ad/or Commission Item Calendar

Commissioner Goode made a motion to start future meetings at 5:00 p.m. Vice Chairman Washington seconded the motion.

Commissioner Bergdoll said it would be difficult for him to attend at 5:00 p.m. and cited public access to the meetings. Chairman Buzzard said he would prefer starting at a time when everyone can comfortably attend.

A brief discussion of meeting times of other boards and commissions ensued, and a variety of start times was noted.

The motion carried by a vote of five (5) to two (2). Chairman Buzzard and Commissioner Bergdoll were opposed.

Commission Summary of Current Events

Commissioner Yates commended staff for conducting themselves beautifully through the regulatory rewrite process.

Vice Chairman Washington thanked staff for their patience with the Commission and the public.

Chairman Buzzard said rules and regulations need to be reviewed periodically. The process is not easy as there are different ways to interpret things. The fact that they can have a solid, civil discussion is a testament to them all. He thanked everyone for their input.

Commissioner Casey expressed that he is impressed with all the Commissioners who have put in extra effort on the regulatory rewrite.

Future Agenda Items

Saying he was sorry Mr. Katsenes was not in attendance, Vice Chairman Washington commented that when the City sees an opportunity to leverage its cultural assets they are willing to spend money. Perhaps Economic Vitality should rent the restaurant space from the Airport and find a coffee shop as a tenant.

Vice Chairman Washington made a motion to agendize a discussion about the Airport restaurant at the next meeting. Commissioner Casey seconded the motion.

Commissioner Casey said staff has put in a great deal of effort on the restaurant issue. He thanked them for their hard work. This is a very important question. He opined that at the next meeting everyone should help look for a way to make it work. To him, it is so important that the Airport have a restaurant that they need to think outside the box.

The motion carried by a unanimous vote of seven (7) to zero (0).

Chairman Buzzard suggested a review of the Commission's bylaws. He undertook to review this further and may bring this up in the future.

Commissioner Schuckert noted that the website does not provide the individual email addresses of Commissioners. Mr. Mascaro said visitors to the website can click on the link and send email to the Commission as a whole. However, members of the public can

contact himself or Ms. Theresa Smith requesting that their message be forwarded to a specific Commissioner. Staff then screens these requests with the Commissioner. After further discussion Mr. Mascaro undertook to double-check how this is functioning. Chairman Buzzard suggested running a test with all Commissioners.

ADJOURNMENT

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 7:42 p.m.

Respectfully submitted,

A/V Tronics, Inc. DBA AVTranz